

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID FLORENCE,  
Plaintiff,  
v.

KATHLEEN ALLISON, et al.,  
Defendants.

Case No. [22-cv-02265-JSC](#)

**ORDER OF SERVICE**

**INTRODUCTION**

Plaintiff, a California prisoner proceeding without an attorney, filed this civil rights action under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the complaint is ordered served upon Defendants.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pleadings filed by parties unrepresented by a lawyer must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although to

1 state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to  
 2 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a  
 3 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must  
 4 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
 5 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer “enough facts to  
 6 state a claim for relief that is plausible on its face.” *Id.* at 1974.

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a  
 8 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged  
 9 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.  
 10 42, 48 (1988).

### 11 LEGAL CLAIMS

12 When liberally construed, Plaintiff’s allegations state a cognizable claim for relief against  
 13 Defendants for being deliberately indifferent to his medical needs, in violation of his Eighth  
 14 Amendment rights.

### 15 CONCLUSION

16 For the foregoing reasons,

17 1. Defendants Secretary Kathleen Allison and Appeals Examiner Kenneth J. Allen  
 18 shall be served at the California Department of Corrections and Rehabilitation. Defendant G.  
 19 Cates shall be served at the California Correctional Health Care Services. Defendants Warden J.  
 20 Robertson, Chief Executive Officer Bill Woods, Chief Medical Executive Donna Jacobsen, Dr.  
 21 Mauricio Martinez, Licensed Vocational Nurse L. Ford, Licensed Vocational Nurse A. Romero,  
 22 Facility Captain J. Berg, and Chief Mental Health Dr. K. Limon shall be served at Pelican Bay  
 23 State Prison. Defendant G. Cates shall be served at the California Correctional Health Care  
 24 Services.

25 Service shall proceed under the California Department of Corrections and Rehabilitation’s  
 26 (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance  
 27 with the program, the Clerk is directed to serve on CDCR via email the following documents: the  
 28 complaint, this order, a CDCR Report of E-Service Waiver form, and a summons. The Clerk also

1 shall serve a copy of this order on the Plaintiff.

2 No later than 40 days after service of this order via email on CDCR, CDCR shall provide  
3 the Court a completed CDCR Report of E-Service Waiver advising the Court which Defendant(s)  
4 listed in this order will be waiving service of process without the need for service by the United  
5 States Marshal Service (USMS) and which Defendant(s) decline to waive service or could not be  
6 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the  
7 California Attorney General's Office which, within 21 days, shall file with the Court a waiver of  
8 service of process for the Defendant(s) who are waiving service.

9 Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each  
10 Defendant who has not waived service according to the CDCR Report of E-Service Waiver a  
11 USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies  
12 of this order, the summons, and the complaint for service upon each Defendant who has not  
13 waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-  
14 Service Waiver.

15 2. Service on Defendant Receiver J. Clark Kelso shall proceed separately. The Clerk  
16 is directed to electronically serve J. Clark Kelso and his attorney via the email address  
17 HCLitigationSupport@cdcr.ca.gov the following documents: the complaint, this order, a Waiver  
18 of the Service of Summons form, and a summons.

19 No later than 40 days after service of this order via email on Kelso and his attorney, Kelso  
20 shall file the Waiver of the Service of Summons or a Notice indicating that he does not waive  
21 service. If Kelso files such a notice, the Clerk shall prepare a USM-205 Form and shall provide to  
22 the USMS the completed USM-205 form and copies of this order, the summons, and complaint for  
23 service upon Kelso.

24 3. To expedite the resolution of this case:

25 a. No later than **91** days from the date this order is issued, Defendants shall file a  
26 motion for summary judgment or other dispositive motion. The motion shall be supported by  
27 adequate factual documentation and shall conform in all respects to Federal Rule of Civil  
28 Procedure 56 and shall include as exhibits all records and incident reports stemming from the

1 events at issue. If Defendants are of the opinion that this case cannot be resolved by summary  
2 judgment, they shall so inform the Court prior to the date the summary judgment motion is due.  
3 All papers filed with the Court shall be promptly served on Plaintiff.

4 b. At the time the dispositive motion is served, Defendants shall also serve, on a  
5 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th  
6 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

7 c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the  
8 Court and served upon Defendants no later than **28 days** from the date the motion is filed.  
9 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him  
10 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

11 d. Defendants shall file a reply brief no later than **14** days after the opposition is  
12 filed.

13 e. The motion shall be deemed submitted as of the date the reply brief is due. No  
14 hearing will be held on the motion unless the Court so orders at a later date.

15 4. All communications by the plaintiff with the court must be served on defendants, or  
16 defendants' counsel once counsel has been designated, by mailing a true copy of the document to  
17 defendants or their counsel.

18 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No  
19 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required  
20 before the parties may conduct discovery.

21 Plaintiff is reminded that state prisoners inmates may review all non-confidential material  
22 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.  
23 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations  
24 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to  
25 review these files or for copies of materials in them must be made directly to prison officials, not  
26 to the court.

27 6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
28 informed of any change of address and must comply with the court's orders in a timely fashion.

Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

**IT IS SO ORDERED.**

Dated: July 21, 2022

  
JACQUELINE SCOTT CORLEY  
United States District Judge

United States District Court  
Northern District of California

**NOTICE -- WARNING (SUMMARY JUDGMENT)**

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.